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Paper No. 8

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APR 08 2003

OFFICE OF PETITIONS

In re Application of	:	
Brown, et al.	:	
Application No. 10/086,920	:	DECISION REFUSING STATUS
Filed: March 1, 2002	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. 06912.0188-00000	:	

This is in response to the petition under 37 CFR 1.47(a), filed November 18, 2002.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified reissue application was filed on March 1, 2002, without an oath or declaration. Accordingly, on April 17, 2002, applicant was mailed a "Notice to File Missing Parts of Reissue Application - Filing Date Granted," requiring, *inter alia*, an executed oath or declaration, together with the surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a five month extension of time. Accompanying the petition was a declaration executed by joint inventors Steven Joseph Brown, Larry Stefan Ingram, and Neale Arthur Messina, but lacking a signature from joint inventor Marek Tarczynski.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventors.

¹ November 17, 2002 fell on a Sunday. See 37 CFR 1.7(a).

The instant petition does not satisfy requirement (2).

As to requirement (2), the declaration is not acceptable because the alteration to the address of Neale Arthur Messina is not dated and **initialled** or signed.² Regarding this, the Manual of Patent Examining Procedure states that it is "improper for anyone, including counsel, to alter, rewrite, or partly fill in any part of the application, including the oath or declaration, after execution of the oath or declaration by the applicant." Furthermore, the Office "will not consider whether noninitialled and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration."³

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions

² "Any interlineation, erasure, cancellation or other alteration of the application papers...should be dated and initialled or signed by the applicant on the same sheet of paper." 37 CFR 1.52(c)(1).

³ MPEP 605.04(a).